

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SCOTTSDALE INSURANCE COMPANY,

Plaintiff,

v.

CHRIS CARPENTRY CO., JAN BRYJAK, and
KRY S YOWALKOWSKI,

Defendants.

Case No.: 1:18-cv-06384
Honorable Matthew F. Kennelly

**DEFENDANT JAN BRYJAK'S FEDERAL RULE OF CIVIL
PROCEDURE 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS
ON COUNT II OF THE AMENDED COMPLAINT**

NOW COMES, Defendant JAN BRYJAK, by and through his counsel, Kent D. Sinson of Sinson Law Group and prays this Honorable Court grant Defendant Jan Bryjak's Federal Rule of Civil Procedure 12(c) Motion for Judgment on the Pleadings on Count II of the Amended Complaint; in support Defendant Jan Bryjak states as follows:

Introduction

1. Scottsdale Insurance Company ("Scottsdale") has filed its Amended Complaint seeking declaratory judgment that the Commercial General Liability Policy (the "Policy" or "CGL Policy") it issued to Chris Carpentry Co., ("CCC") provides no coverage for the injuries sustained by Jan Bryjak ("Bryjak") on a construction site as a result of CCC's negligence based on an "Injury to Worker Exclusion" ("the Exclusion" or "IWE"). (Docket #152).

2. The pleadings reveal:

- a. the Exclusion was added to the Policy in 2016 at the time of renewal;
- b. the addition of the Exclusion was a material modification of the Policy; and
- c. the Exclusion was added by Scottsdale without giving notice to CCC of the material modification to the CGL Policy. (DKT #167-1, Exhibits 1 - 4)

3. The Policy Exclusion relied upon by Scottsdale is unenforceable as a matter of law because it was issued without notice of a material modification to CCC in violation of 215 ILCS 5/143.17a(b) which requires written notice of changes in coverage “that materially alter the policy” be mailed or delivered to the insured at least 60 days prior to renewal. (DKT #167, First Affirmative Defense). *See, Guillen ex rel. Guillen v. Potomac Ins. Co. of Illinois*, 203 Ill. 2d 141, 154–57 (2003) (when an insurer renews a policy in Illinois, unless it provides its insureds with notice of the modification in coverage and maintained proof of mailing the notice as required by 215 ILCS 5/143.17a, the policy modification is ineffective).

4. Pursuant to Fed. R. Civ. P. 12(c), a party may move for judgment on the pleadings after the complaint and answer have been filed. *In re Fink*, 351 B.R. 511, 520 (Bankr. N.D. Ill. 2006); *N. Ind. Gun & Outdoor Shows, Inc. v. City of S. Bend*, 163 F.3d 449, 452 (7th Cir.1998).

5. Scottsdale’s Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(c) based on Bryjak’s affirmative defense because Scottsdale failed to provide CCC with notice of the material modification in the CGL Policy; therefore, the Exclusion unenforceable as a matter of law. *See, Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012) (when all relevant facts are presented court may properly dismiss a case before discovery through a Rule 12(c) motion for judgment on the pleadings on the basis of an affirmative defense) (citing *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir.2009) (approving of granting motions to dismiss based on the statute of limitations)).

6. For the reasons set forth herein and in Bryjak’s Memorandum of Law in Support of Jan Bryjak’s Federal Rule of Civil Procedure 12(c) Motion for Judgment on the Pleadings on

Count II of the Amended Complaint, Count II of the Amended Complaint should be dismissed with prejudice on the pleadings.

WHEREFORE, Defendant, JAN BRYJAK, prays that this Honorable Court grant judgment on the pleadings in his favor and against Plaintiff, SCOTTSDALE INSURANCE COMPANY, dismiss Count II of the Amended Complaint for Declaratory Judgment with prejudice, and for such other and further relief the Court deems just and proper.

Dated: September 17, 2019

Respectfully submitted,

/s:/ Kent D. Sinson
Kent D. Sinson

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